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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92060308
Party	Defendant Corcamore, LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SFM, LLC,	}	
	}	Cancellation No: 92 060308
v.	}	
	}	
Corcamore, LLC	}	Registration No. 3708453
	}	
Respondent-Registrant.	}	

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**REPLY OF  
RESPONDENT-REGISTRANT ON PARTIAL SUMMARY JUDGMENT.**

Procedural Background. By Order, the Petitioner SFM was required to respond on the preclusion issues raised in the respondent's motion, based on Trademark Rule 2.127(e)(1).<sup>1</sup>

Petitioner filed an opposition, but no affidavit, no declaration, and no notice of reliance. Important matters of fact, affirmatively shown in the respondent's motion, were unrebutted in the petitioner's brief and exhibits in opposition.

**Undisputed Material Facts**

1. The petitioner SFM's prior civil suit against, and counterclaim by, SPROUTS NATURAL MARKET<sup>2</sup> concerned the same registration, no. 2,798,632 and trademark for Sprout's Farmers Market, identified only with retail grocery store services, as SFM attempted to plead here.
  
2. Opposition does not dispute that petitioner SFM is, or is in privity with, the party-plaintiff and counterclaim-defendant SFM, LLC, whose prior civil suit<sup>3</sup> pleaded a date of first use<sup>4</sup> for the same registration and trademark.

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<sup>1</sup> Rule 2.127(e)(1): "A party may not file a motion for summary judgment until the party has made its initial disclosures, except for a motion asserting claim or issue preclusion".

<sup>2</sup> *SFM, LLC v. Sprouts Natural Market, Inc.*, docket no. 3:11-CV-2640 (S.D. Calif.)

<sup>3</sup> See, Exhibit A to SFM's opposition filed here June 1, 2015.

3. Petitioner does not dispute that the primary issue, contested and litigated, in the prior civil suit was whether SPROUTS NATURAL MARKET was the first user of the Sprouts mark for grocery store services.<sup>5</sup>

4. Pled in its prior civil suit, but could not prove, that Sprouts Farmers Market was the first user of the mark for grocery store services.

5. Here, petitioner SFM's opposition acknowledges that a "determination of priority was necessary to the district court's" order<sup>6</sup> in its prior civil suit against SPROUTS NATURAL MARKET.

6. Here and now, Petitioner SFM cannot dispute that the court, in its prior civil suit, found "the evidence submitted by Defendant in support of its contention that it used the SPROUTS NATURAL MARKET in relation to its store prior to December 2001 persuasive," and ruled that "the evidence sufficiently demonstrates Defendant's prior and continuous use of the trade name and trademark to overcome" plaintiff SFM's claim of being the senior user.<sup>7</sup>

7. Petitioner SFM's prior civil action was dismissed finally "WITH PREJUDICE."<sup>8</sup>

8. Pled here facts, the Petition and First Amended Petition that differ from and are not wholly consistent with the others. (Compare ¶1 in original petition, ¶6 in First Amended petition, and ¶11 in prior civil suit, and too, fn. 2 in Opposition brief filed here Jan. 2, 2015).

9. Pled here, then revised that in footnote 2 of its opposition brief (as procedurally distinct from an amendment), first that a "licensee" then later revised to "affiliates" are the actually users of the petitioner's marks. But, neither in the application for registration, nor in the

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<sup>4</sup> See, ¶s 11 & 22 in Complaint in *SFM, LLC v. Sprouts Natural Market, Inc.*, docket no. 3:11-CV-2640, PACER paginated 2 & 3 of 26, in Exhibit 1 to respondent's motion, filed here 12 DEC 2014.

<sup>5</sup> See, pages 5 – 9 in Exhibit 1 to respondent's motion, filed here 12 DEC 2014.

<sup>6</sup> See, Exhibit 1 to respondent's motion, filed here 12 DEC 2014.

<sup>7</sup> See, page 9 in Exhibit 1 to respondent's motion, filed 12 DEC 2014, excerpt attached here at Exhibit A.

<sup>8</sup> See, Exhibit B to SFM's opposition filed here June 1, 2015.

later-filed statements of use<sup>9</sup>, did the petitioner SFM ever identify a licensee or affiliates as the actual users.

**A. Summary Judgment Proper Where Opponent Does Not Present Facts.**

The foregoing facts, which support a finding of issue preclusion and judicial estoppel, were shown affirmatively in the registrant-respondent's motion and exhibits, and those were unrebutted in the opposition brief of the petitioner SFM.

When a nonmoving party, here, SFM, “fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the [TTAB] may ... consider the fact undisputed for purposes of the motion.” Rule 56(e)(2), FED. R. CIV. P. Petitioner SFM, as the nonmoving party, “cannot ‘rest upon the mere allegations or denials ... but must instead produce evidence that ‘set[s] forth specific facts showing that there is a genuine issue for trial.’” *Tucker ex rel. Tucker v. Interscope Records, Inc.*, 515 F.3d 1019, 1030 (9<sup>th</sup> Cir. 2008), quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When the moving party has made its affirmative showing of undisputed facts, it is entitled to summary judgment unless the nonmoving party, in response, “come[s] forward with significant, probative evidence demonstrating the existence” of a genuine dispute of material fact. *Chanel, Inc. v. Italian Activewear of Fla., Inc.*, 931 F.2d 1472, 1477 (11<sup>th</sup> Cir. 1991). The nonmovant SFM “is deemed to have admitted the validity of the facts contained in the [respondent's] statement” of undisputed material facts. *Beard v. Banks*, 548 U.S. 521, 527, 126 S.Ct. 2572, 165 L.Ed.2d 697 (2006).

Here, petitioner SFM tries to rely on attorney argument in its opposition brief, when Rule 56 requires evidence, affidavits or other admissible facts to be presented. SFM as the “nonmoving party may not rest on mere denials or conclusory assertions, but rather must proffer

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<sup>9</sup> See, Exhibit A to SFM's Opposition filed here Jan. 2, 2015.

countering evidence, by affidavit or as otherwise provided in Fed. R. Civ. P. 56, showing that there is a genuine factual dispute.” *Enbridge, Inc. v. Excelerate Energy Limited Partnership*, 92 USPQ2d 1537 (TTAB 2009). As the nonmoving party, SFM must produce evidence to support its allegations, and its attorney’s arguments fail to do more than try creating “some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). “If, indeed, evidence was available to underpin (the) conclusory statement[s]” in SFM’s opposition brief, then, “Rule 56 required (the party opposing summary judgment) to come forward with it.” *Donnelly v. Guion*, 467 F.2d 290, 293 (2<sup>nd</sup> Cir. 1972). “Summary judgment will be entered against the opposing party if that party does not present such specific facts” showing a genuine issue as to a fact material to its case. *Hebrew Univ. of Jerusalem v. Gen. Motors LLC*, 878 F.Supp.2d 1021, 1024 (C.D. Cal. 2012).

Based on the Rule governing summary judgment practice, the nonmovant SFM failed to present any affidavit or evidence that rebuts the facts shown in the respondent’s motion, or any that raises any genuine dispute as to the facts material to judicial estoppel and issue preclusion. Therefore, a ruling on these issues can be made now as a matter of law.

#### **B. Preclusion Attaches to the Facts and Claims Litigated Previously.**

The prior civil suit produced a hearing and determination based on conflicting evidence, and ended with a dismissal of its suit “WITH PREJUDICE.” “[W]hether preclusion applies to a particular action is an issue of law.” *Jet, Inc., Sewage Aeration Sys.*, 223 F.3d 1360, 55 USPQ2d 1854, 1856 (Fed. Cir. 2000), citing, *Foster v. Hallco Mfg. Co.*, 947 F.2d 469, 475, 20 USPQ2d 1241, 1246 (Fed.Cir.1991) (“there is no dispute that ... claim preclusion principles apply to a

consent judgment.” At 1248).<sup>10</sup> See too, *Flowers Indus. Inc. v. Interstate Brands Corp.*, 5 USPQ2d 1580, 1583 (TTAB 1987) (claim preclusion applies “even when the prior judgment resulted from default, consent, or dismissal with prejudice”); “for purposes of issue preclusion (as distinguished from merger and bar), ‘final judgment’ includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect.” RESTATEMENT (Second) OF JUDGMENTS § 13 (1982).

Petitioner SFM’s argument for different treatment because its earlier “case settled” has not cited basis in precedent. “To the extent that [SFM]’s assertions could be construed as an argument that the consent order issued by the district court is not a final judgment ..., the contention is not well founded.” *Zoba Int’l Corp. v. DVD Format/LOGO Licensing Corp.*, 98 USPQ2d 1108 (TTAB 2011), *appeal dism’d*, 427 Fed. Appx. 892 (Fed. Cir. 2011). The prior adjudication, unfavorable to SFM’s assertion of first, was valid, actually litigated and “sufficiently firm to be accorded conclusive effect” for purposes of issue preclusion.

In its prior civil suit, petitioner SFM pleaded that it was the first user of SPROUTS and MARKET for retail grocery store services, and after that first user issue actually was litigated, SFM lost. The District Court in California ruled that the “evidence” was “persuasive” and “sufficiently demonstrates” that the first user of the mark, for retail grocery store services, was SPROUTS NATURAL MARKET, not SFM.<sup>11</sup> The plaintiff there, the petitioner here, SFM, LLC is barred from the “subsequent assertion of the same transactional facts in the form of a different cause of action or theory of relief.” *Vitaline Corp. v. General Mills Inc.*, 891 F.2d 273, 13 USPQ2d 1172, 1173 (Fed. Cir. 1989). In the prior action, SFM chose not to appeal the

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<sup>10</sup> Oddly, on page 10 of its brief, the petitioner quotes helpful headnotes from *Arizona v. California*, 530 U.S. 392, 395, and thereby ignores that the Court specifically did *not* rule on preclusion, stating that “We agree that the State parties’ preclusion defense is inadmissible at this late date, and therefore we do not reach the merits of that plea.” *Id.*, 408-09.

<sup>11</sup> See, Exhibit A, excerpt from order in SFM’s prior civil suit.

injunction, but scrambled to get a private deal for dismissal of its case “WITH PREJUDICE.”

"The underlying rationale is that a party who has litigated an issue and lost should be bound by that decision and cannot demand that the issue be decided over again." *Mother's Restaurant, Inc., v. Mama's Pizza*, 723 F.2d 1566, 221 USPQ 394, 397 (Fed. Cir. 1983).

On the basis of the record in the prior civil case, the lack of genuine opposition here from petitioner, and the prevailing law from the Federal Circuit, issue preclusion runs against petitioner SFM, LLC, which may not plead here that which is inconsistent with what was pleaded, litigated and decided in its prior civil action over the very same trademarks.

### **C. Arguments over Governing Caselaw.**

In arguing against preclusion, petitioner SFM's opposition brief at pg. 4 relies largely on a nonprecedential ruling in the matter against *Sturgis Bike Week*, which SFM cites contrary to TMEP §705.05, which instructs that “the Board will disregard citation as precedent of any unpublished or digest decision. Even if a complete copy of the unpublished or digest decision is submitted, the Board will disregard citation as precedent thereof.”

Even if *Sturgis* were not disregarded, the 7<sup>th</sup> Circuit's decision in *Miller Brewing Co. v. Jos. Schlitz Brewing Co.*, 605 F.2d 990, 203 U.S.P.Q. 642, 657-48 (7th Cir. 1978), *cert. den'd*, 205 USPQ96 (1980) (“a preliminary injunction order does not preclude application of collateral estoppel”) is superior precedent.<sup>12</sup> Even SFM's opposition brief acknowledges that in *Miller Brewing*, the “Seventh Circuit held that [*one issue as to*] the mark had been so thoroughly litigated in the first preliminary injunction proceeding that, as to that issue, there was a sufficient

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<sup>12</sup> An important distinction between this matter and *Sturgis* is that there, the party seeking to avoid preclusion supported its contention with evidence that “subsequent to the preliminary injunction decision, the parties in the civil action entered into a co-existence agreement, settlement agreement and release,” but here, SFM provided nothing to support a such a finding. Thus, the ruling here must be based on the actual findings and order of the Court, and on the dismissal “WITH PREJUDICE.”

final judgment.” The necessary extension of that here is that the issue of first use of SFM’s mark was “thoroughly litigated in the first preliminary injunction proceeding” in its prior civil suit against SPROUTS NATURAL MARKET “that, as to that issue, there was a sufficient final judgment” on a material point in SFM’s prior case, which is preclusive here.

In SPM’s opposition no effort was made to distinguish or dispute the judicial estoppel contentions and authorities on page 7 on the respondent’s motion, filed 12 DEC 2014.

Petitioner SFM urges that a ‘time & place’ limitation survived the loss of the adjudicated issue, its choice not to appeal, and the voluntary dismissal “WITH PREJUDICE,” but the law recognizes no such limitation. “A significant part of an analysis of issue preclusion is to review the prior litigation carefully to determine what issues were resolved during the course of proceedings by the court and were necessary to the judgment.” *Hartley v. Mentor Corp.*, 869 F.2d 1469, U.S.P.Q.2d 1138, 1141 (Fed. Cir. 1989). It too is incongruous for SFM to raise the ‘time and place’ facts from its prior suit, when those same facts are again what it would rely on here to claim it was the first user. Last, for SFM, which pegs its standing upon the commercial activities of some unnamed “affiliates” not its own, but that too indicates jus terii effort to raise the rights of a non-party.

For all the reasons set forth in the motion and this reply, and in view of the material facts not being genuinely disputed in the opposition arguments of petitioner SFM, an order of partial summary judgment is warranted.

12 JUN 2015

Respectfully submitted,  
~S~ Charles L. Thomason  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of June, 2015, a true and complete copy of the foregoing Reply on Motion for Summary Judgment was mailed to the attorneys for the Petitioner, directed to the address of the attorney indicated below:

Nicole M. Murray, Esq.  
Quarles & Brady LLP  
300 N. LaSalle St., Suite 4000  
Chicago, IL 60654

Date: 12 JUN 2015

~ S ~ /Charles L. Thomason/  
Charles L. Thomason

## EXHIBIT A

1 Plaintiff does not dispute the similarity of the marks is likely to cause confusion.  
2 See Pla's Opp. at 10. However, Plaintiff argues Defendant cannot demonstrate a  
3 likelihood of success on the merits of its action because Defendant fails to show it owns  
4 exclusive rights to the SPROUTS NATURAL MARKET mark for retail grocery services.  
5 Plaintiff maintains it owns the exclusive rights to the SPROUTS FARMERS MARKET  
6 mark and the priority for those rights dates from December 11, 2001, and Defendant's  
7 earliest apparent use of SPROUTS NATURAL MARKET as either a trade name or as the  
8 name for a retail grocery store is 2002. Plaintiff also argues Defendant fails to show the  
9 parties' store names are likely to result in confusion outside of any limited trade area  
10 pertaining to Defendant's single store in Temecula. Plaintiff further argues, even if  
11 Defendant could establish the elements of a trademark infringement claim, Plaintiff's  
12 laches defense precludes any likelihood of success on the merits.

### 13 A. Senior Trademark Rights

14 Plaintiff maintains it has senior trademark rights. Trademark rights are established  
15 through use, not registration or mere adoption. See Sengoku Works Ltd. v. RMC Intern.,  
16 Ltd., 96 F.3d 1217 (9<sup>th</sup> Cir. 1996). Federal registration of a mark is *prima facie* evidence  
17 that the registrant is the owner of the mark. See U.S.C. § 1057. The presumption of  
18 ownership is granted from the filing date of the application for federal registration. See  
19 Rolley, Inc. v. Younghusband, 204 F.2d 209, 211 (9<sup>th</sup> Cir. 1953). A party asserting  
20 common law rights may overcome the presumption by demonstrating its continuous use  
21 of the mark prior to the date of the registration. See Casual Corner Associates, Inc. v.  
22 Casual Stores of Nevada, Inc., 493 F.2d 709 (9<sup>th</sup> Cir. 1974).

23 Plaintiff contends its undisputed federal trademark registration is *prima facie*  
24 evidence it owns exclusive nationwide rights to SPROUTS FARMERS MARKET as a mark  
25 for retail grocery services as of December 11, 2001, and Defendant has no federal  
26 registration of any of the trademark rights it claims to own in the SPROUTS NATURAL  
27 MARKET name. Plaintiff maintains Defendant relies on its September 5, 2001, Riverside  
28 \_\_\_\_\_  
store: Sprouts Natural Market." Cook Decl. ¶ 7.

1 County "Fictitious Business Name" registration in support of its contention it has senior  
2 rights to the name without providing evidence that it was using the alleged trade name at  
3 the time. Plaintiff further maintains Defendant's evidence that it has been using the  
4 SPROUTS NATURAL MARKET name since 2001 is insufficient.

5 Specifically, Plaintiff argues none of the evidence submitted by Defendant  
6 demonstrates any consumer viewed or associated the name SPROUTS NATURAL  
7 MARKET with Defendant's goods and services, or Defendant used it as a trade name or  
8 for transactions that involved consumers of Defendant's goods and services. Plaintiff  
9 further argues the evidence demonstrates Defendants did not use or even publicize the  
10 future use of the SPROUTS NATURAL MARKET name in association with its services  
11 until after December 11, 2001, when it applied for its sign permit on January 16, 2002,  
12 with the City of Temecula to display a SPROUTS NATURAL MARKET sign outside its  
13 store on Winchester Road. The signage announced Defendant's move to Winchester  
14 Road from its Motor City Parkway location and announced the new location's opening  
15 in March 2002. Plaintiff further argues the evidence demonstrates Defendant used the  
16 Health Zone name as its trade name and the name of its retail grocery store until  
17 Defendant opened its first SPROUTS NATURAL MARKET store in 2002. In support,  
18 Plaintiff points to correspondence between Defendant and the Alcoholic Beverage Control  
19 Board in which Defendant identified itself as Health Zone before December 11, 2001, and  
20 after as indicated by documents produced in discovery. See Mitchler Decl. ¶¶ 1,2, 3.  
21 Plaintiff also contends the only evidence to support Defendant's claim that it used either  
22 a trade name for the business or the name of a retail grocery store before December 11,  
23 2001, consists of self-serving declarations of Defendant's owners.

24 In reply, Defendant argues it has established a senior claim because it filed a prior  
25 fictitious business name statement in Riverside county and Plaintiff failed to rebut the  
26 presumption in Defendant's favor as provided in California Business and Profession Code  
27  
28

section 14411.<sup>7</sup> In further support of its contention it has a senior claim, Defendant relies upon the following:

- (1) an advertisement placed in grocery bags advertising Defendant's new name created on July 27, 2001 (Def's Exh. 44 (Doc. No. 25-3));
- (2) a customer sign up sheet with the new name displayed used from August 2001 to April 2002 (Def's Exh. 45 (Doc. No. 25-3, 25-4));
- (3) a California newspaper advertising its fictitious business name on October 4, 2001, October 11, 2001, October 18, 2001, October 25, 2001, November 22, 2001, November 29, 2001, December 6, 2001, and December 13, 2001 (Def's Exh. 46 (Doc. No. 25-5));
- (4) a bank account utilized in 2001 under the new name (Def's Exh. 48, 49 (Doc. No. 25-5));
- (5) a deposit slip dated December 3, 2001 (Def's Exh. 47);
- (6) a deposit slip dated November 13, 2001 (Def's Exh. 48);
- (7) payments to Living Naturally beginning August 2001 for managing the website Defendant created in August 2001, www.sproutsnaturalmarket.com, (Def's Exh. 50 (Doc. No. 25-5));
- (8) signs displayed at the Motor Car Parkway location in approximately September 2001, stating "our website is open all night" and "SproutsNaturalMarket.com" (Def's Exh. 51 (Doc. No. 25-5), Cook Supp. Decl. (Doc. No. 25-2)); and
- (9) phone records of Paul Cook<sup>8</sup> showing no incoming call from a San Diego phone number between January 7, 2002 and January 8, 2002 which supports Defendant's

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<sup>7</sup>Pursuant to California law, "[t]he filing of any fictitious business name statement by a person required to file such statement pursuant to section 17910 shall establish a rebuttable presumption that the registrant has the exclusive right to use as a trade name the fictitious business name. . ." Cal. Bus. & Prof Code § 14411.

<sup>8</sup>Paul Cook owns and operates Defendant, Sprouts Natural Market, with his mother Linda Watson.

1 claim that Scott Wing<sup>9</sup> never called Paul Cook and further supports that Mr. Wing  
2 visited the store prior to December 11, 2001 (Def's Exh. 52 (Doc. No. 25-5)).

3 In the surreply, Plaintiff maintains Defendant's new evidence<sup>10</sup> does not establish  
4 Defendant's use of the SPROUTS NATURAL MARKET name in public as a trademark  
5 prior to 2002. Plaintiff argues the evidence is vague and indefinite and does not establish  
6 bona fide public use in the ordinary course of operating a retail grocery store before 2002.  
7 Specifically, Plaintiff argues the evidence contains undated documents and those that are  
8 dated fail to establish any public trademark use of the name prior to December 11, 2001,  
9 the declaration testimony is questionable, and none of the documents are evidence that  
10 any consumer viewed or associated the name SPROUTS NATURAL MARKET with  
11 Defendant's retail grocery store or goods and services prior to 2002. Plaintiff further  
12 argues the evidence regarding the website does not indicate the contents displayed on the  
13 website or that the website received visitors; and the fliers are not dated and do not have  
14 any text or images that would connect them to Defendant, its store or its goods and  
15 services. Additionally, Plaintiff argues the mailing lists, the sample notices and fliers, the  
16 bank account statements and checks and the newspaper notices fail to indicate any public  
17 use of the name much less any trademark use of the name. At most, Plaintiff contends,  
18 the collective documents are evidence of discrete non-public business events, private  
19 transactions or mandatory official notices that could not and did not expose consumers  
20 to the name as an identifier of Defendant's store or its goods and services.

21 Plaintiff further maintains Assumma, a longtime customer of Defendant who  
22 assisted Defendant in preparing marketing and graphic design materials, testified, during  
23 his deposition, that the use of the name began in 2002. Plaintiff argues the current  
24 Assumma declaration submitted by Defendant includes dates that are rough guesses after  
25 the passage of over 12 years, and the Cook declaration contains information that does not

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26 <sup>9</sup>Wing is a founder and board member of Plaintiff SFM.

27  
28 <sup>10</sup>The signed agreement with a company hired to host a website and an undated flier  
allegedly promoting the domain name, Paul Cook's supplemental declaration, and Chuck  
Assumma's declaration.

1 constitute public use of the name as a trademark. Plaintiff contends the deposition  
2 testimony of Scott Wing is mischaracterized by Defendant, in that Wing admitted he  
3 could not be certain his visit to Defendant's store was January 8, 2002, but he knew it was  
4 early January 2002. Plaintiff argues the cell phone records are inapplicable and  
5 unpersuasive because Wing never stated he called Cook's private cell phone nor that he  
6 had the number.

7 The Court finds the evidence submitted by Defendant in support of its contention  
8 that it used the SPROUTS NATURAL MARKET name in relation to its store prior to  
9 December 2001 persuasive. The owner's assertions that they used the name is supported  
10 by the Assumma declaration and deposition and the documentary evidence, including the  
11 advertisement, the flyer, and the website. Although some documentary evidence is  
12 undated, the Assumma declaration and deposition corroborates other evidence presented  
13 by Defendant and supports Defendant's continuous use of the trade name and mark prior  
14 to December 11, 2001. As such, the evidence sufficiently demonstrates Defendant's prior  
15 and continuous use of the trade name and trademark to overcome the presumption of  
16 ownership in favor of Plaintiff.

17 **B. Likelihood of Confusion Outside Temecula**

18 Plaintiff concedes there is a likelihood of some confusion in this case. However,  
19 Plaintiff goes on to argue Defendant has not provided any evidence to suggest, much less  
20 prove, that any reasonable likelihood of confusion could exist outside the limited trade  
21 area of Defendant's store, and therefore fails to carry its burden of persuasion for an  
22 injunction mandating changes to Plaintiff's 38 stores located throughout three counties  
23 of southern California.

24 In reply, Defendant contends it provided multiple declarations attached to its  
25 motion showing confusion from San Diego to Orange County.

26 The evidence submitted by Defendant to demonstrate likelihood of confusion  
27 includes declarations from its owners Linda Watson and Paul Cook. Watson attests that  
28 customers inquired into whether Defendant's store was closing or a merger was going to